

**STATE OF CALIFORNIA
CONSUMER POWER AND CONSERVATION FINANCING AUTHORITY**

In the Matter of:

Notice of Rulemaking Establishing Target
Reserve Level

Docket 2002-07-01

**INITIAL COMMENTS OF THE
INDEPENDENT ENERGY PRODUCERS ASSOCIATION**

September 5, 2002

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The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the California Power Authority's (CPA) Notice of Rulemaking (Docket 2002-07-01) establishing a target reserve level (TRL) for the California Power Authority Investment Plan (dated July 24, 2002). IEP represents independent power producers and energy marketers, which control or operate over 20,000 MWs of installed capacity in the State of California, including non-renewable, renewable, and cogeneration facilities.

As Initial Comments, IEP offers the following observations to help guide the CPA's Rulemaking.

1. Factors To Guide the TRL Rulemaking

a. Need to Clearly and Consistently Define TRL. The CPA has initiated a process to define the energy and capacity components of a TRL, among other matters. Clarity and certainty in the definition will be critical to an effective procedure. Equally important, however, will be consistency in the definition among the various state and federal entities that will be affected by, or have an effect on, the specification and procurement of adequate reserves.

2. Roles in Establishing A TRL

a. Role of the Federal Government. The federal government (i.e. the Federal Energy Regulatory Commission or FERC) has powers pursuant to the Federal Power Act to established minimum reliability requirements. Under the auspices of the FERC, the North American Electric Reliability Council (NERC) historically employed a voluntary approach to achieving a minimum reliability standard(s). Although market structures have changed and regulatory roles appear to be evolving, the FERC continues to have authority over reliability matters, particularly in terms of establishing minimum federal standards.

b. Role of State. State entities (e.g. the CPUC, local public utility governing boards, the CPA) have the responsibility for establishing TRL targets, consistent with minimum federal standards. While the state could establish higher targets, imposing them equitably across the state may result in unequal application, particularly if the CPUC and the local governing boards of the municipal utilities differ in their perspective as to the appropriate TRL. In order to avoid delays in establishing effective TRL procurement, IEP recommends that the state establish an advisory role or, alternatively, establish in statute the prescribed level of TRL procurement, consistent with minimum federal standards.

3. Who Should Be Held Accountable For Acquiring The Appropriate TRL?

a. Role of Load Serving Entities. IEP recommends that "load serving entities" (LSEs) be held responsible for acquiring the appropriate TRL. Given that inequitable application of the TRL requirement may undermine the timely and effective achievement of TRL targets statewide (i.e. it may raise arguments of "level playing field"), IEP recommends that California recognize the basic fact that TRL targets should be established and achieved through the auspices of the LSEs as directed by the appropriate regulatory bodies. Relying on LSEs to

establish and achieve their TRL targets, consistent with state and federal laws, will enable them to also match their TRL procurement practices with their individual risk profile. Thus, while the federal and/or state regulations prescribe minimum TRL targets, LSE procurement may vary across the state depending on the individual LSE's risk profile and procurement requirements. However, the responsible entity for procuring TRL will be clearly identified as the LSEs. If a LSE fails to plan for and acquire an appropriate TRL above and beyond the minimum amounts required by federal and/or state authorities, then that entity will be accountable to its customers for any cost impacts of poor planning.

Importantly, the state should not implement a program and/or procedure in which more than a single entity has responsibility for acquiring the appropriate TRL for a discrete section of load, as this outcome will simply undermine accountability and place load at risk. To the extent that load serving entities are not suitably creditworthy to procure the TRL, then another entity (e.g. DWR or the CPA) should be empowered to procure such resources from the marketplace until creditworthy status is achieved. Here again, only one entity should be assigned responsibility for procuring the TRL for a unique slice of load in order to ensure full accountability for accomplishing the task.

b. Role of CAISO. The CAISO has the responsibility for procuring reliability products in real-time as an adjustment to deviations in scheduled load and resources. This procurement should supplement but not replace the TLR requirements established for load serving entities.

c. Role of CPA to Supplement, Not Supplant, Private Sector. The CPA has the authority to finance additional generation. California Public Utilities Code section 3352 specifies that the activities of the authority are intended to "supplement private and public sector

power supplies, taking into account generation facilities in operation or under development...consistent with achieving reasonable energy capacity reserves within five years of the effective date of this [code] division." Emphasis added. The CPA should stand ready to (1) recommend the appropriate TRL for load serving entities, and then (2) assist the load serving entities in financing the appropriate TRL to the extent the LSEs are unable to obtain that level employing their own tools (e.g. due to creditworthiness limitations.) However, the LSEs must retain responsibility and accountability for achieving a prescribed TRL; the absence of accountability will undermine statewide efforts to ensure compliance.

4. Factors to Consider When Determining the Appropriate TRL.

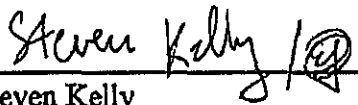
a. The Importance of Risk Insurance. Each LSE should identify and procure TRL based on their particular risk premium. To the extent that an LSE follows a low-risk strategy, then it should procure TRL in the forward markets. To the extent an LSE follows a high-risk strategy, then it should procure less in the forward market and more in the near-term or real-time market. IEP recommends a forward strategy, but ultimately the individual LSE should make the decision based on its financial position and risk profile. If the LSE follows a high-risk strategy (e.g. buys larger amounts of TRL in the real-time market), then it faces a risk of greater volatility (which may mean higher costs). What is important, however, is that the LSE be held accountable and responsible for its own procurement strategy. If an entity other than a LSE were to procure TRLs (e.g. the state or the CPA), then the same holds true: that entity must be responsible and accountable for procurement, including establishing an appropriate risk level.

b. The Need for Regulatory/Political Certainty. Importantly, that entity which establishes the appropriate risk level and fosters TRL procurement must also be held accountable and responsible for the consequences of its strategy. If the risk level changes, those

changes must be prospective. Prospective application of procurement to meet an appropriate reserve margin must be the standard, or else the business and financial community will lose confidence that the TRL procurement is "grounded" from the perspective of regulatory and political certainty. In light of the financial turmoil in the energy sector, the need for regulatory and political certainty as to the state's commitment to TRL targets is critical to ensure that the requisite resources are built in a timely and effective manner.

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Respectfully submitted,



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